

COMMITTEE CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
for the Ivanpah Solar)	07-AFC-5
Electric Generating System)	
_____)	

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

MONDAY, OCTOBER 27, 2008

9:00 a.m.

Reported by:
Ramona Cota
Contract No. 170-07-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Jeffrey D. Byron, Presiding Member

James D. Boyd, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Paul Kramer, Hearing Officer

Susan Brown, Advisor to Commissioner Boyd

Kristy Chew, Advisor to Commissioner Byron

STAFF AND CONSULTANTS PRESENT

Richard Ratliff, Staff Counsel

Eric Knight

Che McFarlin

APPLICANT

Jeffery D. Harris, Attorney
Ellison, Schneider & Harris, LLP

Jedediah J. Gibson, Attorney
Ellison, Schneider & Harris, LLP

Steve De Young
BrightSource Energy

Arthur Haubensstock
BrightSource Energy

Keely Wachs
BrightSource Energy

John L. Carrier
CH2M HILL

INTERVENOR

Tanya Gulesserian, Attorney
Adams Joseph Broadwell & Cardozo
on behalf of California Unions for Reliable Energy
(via telephone)

ALSO PRESENT

Tom Hurshman, Bureau of Land Management (via
telephone)

Robert M. Doyel, Bureau of Land Management

Allan Thompson (via telephone)

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P R O C E E D I N G S

9:04 a.m.

HEARING OFFICER KRAMER: Good morning,
this is Paul Kramer, the Hearing Officer for the
Ivanpah Solar Electric Project.

The applicant and the staff have asked
for a little bit of time to talk about a late-
breaking proposal regarding the schedule and we
have already sent them off to go ahead and have
those talks. So at this point we are going to
postpone the start, the official start of the
Committee Conference until approximately 20
minutes from now. Those of you on the telephone
please just stay on the line and we will let you
know when we are ready to begin. Thank you.

MR. HURSHMAN: Are we able to hang up
and then call back in on this number in 20
minutes?

HEARING OFFICER KRAMER: Yes, I would
think so.

MR. HURSHMAN: Okay.

HEARING OFFICER KRAMER: We have got the
line open so we will keep it active.

MR. HURSHMAN: Okay. All right, bye.

HEARING OFFICER KRAMER: Off the record.

1 (Whereupon, a recess was taken off
2 the record.)

3 HEARING OFFICER KRAMER: Good morning
4 again. My name is Paul Kramer. I am the Hearing
5 Officer for the Ivanpah Solar Electric Generating
6 System AFC Committee. Let me introduce the people
7 up here on the dais first. To my right is
8 Commissioner Jeffrey Byron. He is the Presiding
9 Member in this case. And to his right is his
10 advisor, Kristy Chew. To my left is Associate
11 Member of the Committee, Jim Boyd, and his
12 advisor, Susan Brown. Now I will ask the parties
13 to introduce themselves next beginning with the
14 applicant. Mr. Harris.

15 MR. HARRIS: Good morning. My name is
16 Jeff Harris, I am here on behalf of BrightSource.
17 And I will let Arthur introduce himself and the
18 rest of our team.

19 MR. HAUBENSTOCK: Yes. I am Arthur
20 Haubenstein with BrightSource Energy. And we have
21 with us Steve De Young, also with BrightSource
22 Energy and Keely Wachs with BrightSource Energy.

23 MR. HARRIS: And then Jed Gibson with my
24 office is here and then John Carrier with CH2M
25 HILL.

1 HEARING OFFICER KRAMER: And does the
2 court reporter have the spellings of your names?

3 MR. HARRIS: We will make sure that she
4 gets cards.

5 HEARING OFFICER KRAMER: Okay, thank
6 you. Staff.

7 MR. RATLIFF: Yes.

8 HEARING OFFICER KRAMER: Introduce
9 yourselves.

10 MR. RATLIFF: Dick Ratliff, staff
11 counsel.

12 HEARING OFFICER KRAMER: I don't think
13 your mic is on.

14 MR. RATLIFF: You're right. Dick
15 Ratliff, staff counsel.

16 MR. KNIGHT: Eric Knight, manager of the
17 Siting and Docket Office.

18 MR. McFARLIN: Che McFarlin, staff
19 siting project manager.

20 MR. DOYEL: And I am Bob Doyel with the
21 Bureau of Land Management, Sacramento State
22 Office.

23 HEARING OFFICER KRAMER: Thank you. We
24 have two or three people on the telephone. I'll
25 just go down the list I think I have.

1 Mr. Thompson, are you still there?

2 MR. THOMPSON: Yes.

3 HEARING OFFICER KRAMER: Introduce
4 yourself, please.

5 MR. THOMPSON: Allan Thompson. I am
6 here as an observer.

7 HEARING OFFICER KRAMER: Okay. And
8 Ms. Gulesserian.

9 MS. GULESSERIAN: Good morning. Tanya
10 Gulesserian on behalf of CURE.

11 HEARING OFFICER KRAMER: Okay. And
12 Mr. Hurshman, did you make it back?

13 MR. HURSHMAN: Yes I did. This is Tom
14 Hurshman, BLM project manager.

15 HEARING OFFICER KRAMER: And anyone else
16 on the telephone?

17 Okay, hearing none, does either party
18 wish to -- The purpose of today's hearing is a
19 continuation of a Committee Conference on October
20 15. The parties thought it would help them to
21 take some additional time to meet and see if they
22 could work out a schedule that was more optimum
23 from their standpoint. So who would like to go
24 first in describing their negotiations and any
25 result? Do I need to flip a coin?

1 MR. RATLIFF: I would be glad to. Dick
2 Ratliff, staff counsel.

3 We met with BLM last week and discussed
4 at length whether and how to embrace the
5 alternative schedule that has been proposed by
6 BrightSource. After a good deal of discussion we
7 decided that we could do the schedule in terms of
8 the process the way BrightSource has proposed to
9 do it. That there might be some disadvantages to
10 it but that there were advantages, enough
11 advantages to it both in terms of saving some time
12 and in terms of protecting the process that we
13 thought made it worth doing.

14 And so the Energy Commission and the BLM
15 have, the staffs of those two agencies have agreed
16 that we will go along with the process that
17 BrightSource proposes. And that would in essence,
18 and the most significant parts of that are that
19 the Draft Environmental Impact Statement will be
20 the staff FSA. And the Final Environmental Impact
21 Statement will be the PMPD as well as other
22 documents as yet to be defined. And those would
23 be the two sort of critical items of the NEPA
24 process that would be tied to our process.

25 We thought that on of the advantages,

1 schedule-wise, by doing this would be it
2 eliminates the dead time that the NOA process, the
3 Notice of Availability required for BLM to publish
4 its documents, it allows us to make use of that
5 time in the Energy Commission process while that
6 continues. So you don't have that dead time, that
7 wasted time.

8 It also allows -- An additional
9 advantage that I think it provides is that it
10 allows the staff to put out the PSA before the
11 DEIS and allows us to get a document out there for
12 the public to look at and respond to and comment
13 on. It allows us to go to workshops on that
14 document to get a discussion going about the
15 issues that might be of interest with regard to
16 this project.

17 So we think that those are all
18 advantages that come with this change in the way
19 we identify the documents and process the
20 application. Having said that, when we looked
21 hard at how that schedule would work, I think BLM
22 and staff believe that the time advantages are
23 still not ones that achieve the summer, the
24 conclusion of the proceeding in the summer that
25 BrightSource has said that they need.

1 Not surprisingly when we met with
2 BrightSource prior to this hearing there is some
3 disappointment that the schedule that we believe
4 comes out of this agreement is not one that gets
5 them to where they believe they need to be. And
6 they can talk about that more, and I am sure they
7 will elaborate on that in a moment.

8 But I think the staff and BLM staff too
9 are very, we want to accelerate the schedule as
10 much as we reasonably can, we just don't want to
11 over-promise in ways that will make sure that we
12 will not meet the milestones that we put forth in
13 the document, in the draft schedule that we
14 provided to you just now.

15 So this is what we think is probably a
16 possible schedule if things go well. There may be
17 ways to make it go faster. There may be things
18 that do go faster. There may be things that make
19 it go slower. But we propose this to be the
20 schedule because we think it is probably the most
21 likely picture of how things will work as we see
22 them now.

23 HEARING OFFICER KRAMER: Mr. Harris.
24 First let me ask Mr. Ratliff. We just received a
25 copy of CEC and BLM staff's probable date

1 projections for Ivanpah. I gather this is the
2 staff's estimate of the time.

3 MR. RATLIFF: Yes, that's right.

4 HEARING OFFICER KRAMER: It isn't
5 necessarily agreed to by the applicant.

6 MR. RATLIFF: No it's not. And it was
7 prepared Friday after discussions concluded with
8 BLM and BrightSource only received it this
9 morning. I am not sure -- I hope Tom Hurshman has
10 it, I don't know if he does or not.

11 MR. HURSHMAN: Yes I do, Dick.

12 MR. RATLIFF: Great. So the applicant
13 is reacting to it for the first time. And
14 truthfully, so am I. I didn't see the dates on
15 here. We did discuss them in our meeting on
16 Friday but this is the first time we have actually
17 had it down on paper in a completely integrated
18 way.

19 HEARING OFFICER KRAMER: Okay.

20 Mr. Harris.

21 MR. HARRIS: Thank you. Jeff Harris on
22 behalf of BrightSource. I want to begin by
23 thanking the staff and the BLM's -- when I say
24 staff I mean the BLM staff and Commission staves
25 together, for sitting down and working with us.

1 We are really looking at ways to efficiently
2 integrate these processes. And notwithstanding
3 the fact that you are all at a dais and we are at
4 opposite tables like this is a litigation
5 situation, it has been a very collaborative
6 process.

7 We have some good faith disagreements on
8 how quickly things might proceed and we are going
9 to put those out for you to consider. But I
10 really want to emphasize how much we appreciate
11 the BLM folks coming down to talk today and then
12 talk about these issues and the staff's time to
13 talk to these issues. So while you will see some
14 disagreement on where we can save time, please
15 understand that we do appreciate the work that has
16 gone into this.

17 And we are just looking for ways to cut
18 a new trail, frankly. No one in California has
19 done this. We think we have some good ideas. You
20 know, we are not that far off, even with what we
21 have seen for the first time this morning here.
22 We have been talking about a summer of 2009
23 decision sort of as a shorthand. We would
24 obviously like it as early as possible in the
25 summer of 2009.

1 What we have seen for the first time
2 this morning is only off by three months and we
3 think that there are some ways that we can make up
4 that time. That is going to require
5 accountability for everybody sitting at our table,
6 sitting at the other table and from everybody
7 involved in the process and really making this a
8 priority.

9 I have got some specific suggestions on
10 how we might try to capture back that minor three
11 month difference and I can go through those
12 specifically. But before I do that I would like
13 to turn it over to Arthur with BrightSource so he
14 can explain his position with the company and
15 explain why do three months really matter to us.
16 That's a fair question in how long power plants
17 typically take in California. Three months is a
18 relatively short period of time but it is a
19 significant period of time. So let me ask Arthur
20 to say a few words on the summer of 2009.

21 MR. HAUBENSTOCK: I'm Arthur
22 Haubenstein, Chief Counsel and Director of
23 Regulatory Affairs for BrightSource. And again, I
24 want to underline what Jeff just said. We very
25 much appreciate both BLM and the Energy

1 Commission's staff's ability to come around and to
2 look at this creatively and to recognize some of
3 the benefits of the approach that we have
4 outlined.

5 We strongly believe that this provides
6 for a more meaningful and more robust process with
7 greater information going to the public during
8 public comment periods. And we think that it will
9 ultimately provide a significant savings in time
10 and allow us to provide renewable energy to
11 California sooner than we would otherwise. And
12 that is much of what it comes down to.

13 We are very concerned about the process
14 and being able to create a strong foundation for
15 the Energy Commission and BLM moving forward. We
16 are the first one out of the box and what we do
17 here makes a big difference, not just to us but to
18 the solar industry at large. And we are convinced
19 that this is going to be a very good story, not
20 just for BrightSource but for the Energy
21 Commission and for BLM as well.

22 We want to make this a good and solid
23 experience and something that the public will look
24 to with pride and something that will show that
25 the Renewable Portfolio Standard Program is not

1 just a paper program but that it will deliver
2 energy. And it will deliver energy on time,
3 within the confines of the existing contracts, and
4 also in a way that is environmentally responsible.

5 One of the things we are very concerned
6 about, and it is very much a part of
7 BrightSource's DNA, is to act in an
8 environmentally responsible manner and to try to
9 do our work in a way that it is the most
10 environmentally responsible, the most
11 environmentally sustainable, that we possibly can.

12 What we are informed is the best time to
13 address tortoise mitigation issues, for example,
14 would be in the fall. If we don't have a decision
15 in the summer then we will not be able to take
16 advantage of that optimal time for tortoise
17 management. And that is of tremendous concern.
18 We want to do things in such a way as we can,
19 again, set the best possible precedent for the
20 solar energy industry moving forward.

21 We also are very cognizant of what is
22 happening in the economic environment right now.
23 And we certainly get a lot of calls from our
24 investors and from potential backers of our
25 projects that are looking to see what happens.

1 They are looking to see if California means
2 business and whether we can count on the
3 commitments that we are getting from our
4 governmental regulators.

5 We have been saying very much that is
6 the case. That we strongly believe that we are
7 working in partnership with state and federal
8 partners and that we can work together to achieve
9 renewable energy deliveries within the times that
10 are required by the contracts. That we are not
11 going to be exposed to substantial penalties or
12 have any other risks associated with it because we
13 are convinced this can be done and will be done.

14 We are very cognizant of the resource
15 constraints. BLM and the Energy Commission have a
16 tremendous amount of work to do with this
17 incredible increase in interest in solar energy.
18 And we, again, recognize we are first out of the
19 box. We believe that many of the time savings
20 that Jeff will go into is something that can be
21 done in a way if resources are directed to it.

22 We recognize it is going to require more
23 assistance. We were among a group of companies
24 and environmental organizations that have
25 requested that the federal government, for

1 example, provide more resources to BLM so that BLM
2 and CEC can work together more efficiently and
3 more effectively and with greater time efficiency.

4 So we are ready and willing to roll up
5 our sleeves and to try to find whatever time
6 savings we can so we can get out there, provide
7 the energy on time, build at a time that is
8 environmentally optimal. And again, make a strong
9 showing for what California can do. This is the
10 first, as you know. The first, major solar
11 project in California for 20 years. And it is
12 important to all of us, absolutely on every side
13 of each of these tables that it be a success. And
14 we want to help work with you and make it that
15 success. So Jeff.

16 MR. HARRIS: Thank you. In 2009 is an
17 important deadline for us to be able to make our
18 contractual commitments as well.

19 Let me walk through kind of at a high
20 level where we think things are and then get into
21 specific time savings. And one of the things that
22 -- I have couple of handouts that I will be giving
23 out here. And I will file and serve these,
24 Mr. Kramer, afterwards.

25 HEARING OFFICER KRAMER: On that point,

1 will staff be docketing their exhibit later today
2 as well?

3 MR. RATLIFF: Yes.

4 MR. HARRIS: And I apologize to the
5 folks on the phone. They won't be able to see
6 these visuals. There are two documents and they
7 are color-coded just so I can refer to them that
8 way. One is color-coded in red and one is color-
9 coded in green. I want to start with the one that
10 is color-coded in red if you have those in front
11 of you. All this is intended to show is an
12 attempt to link the Energy Commission's
13 considerable, additional processes with the BLM's
14 processes.

15 So again focusing on the document that
16 is in red. The MOU creates some linkages between
17 Energy Commission documents and BLM documents.
18 The first linkage is the Draft EIS being linked to
19 the Preliminary Staff Assessment. And the second
20 linkage is the Final EIS being linked to the Final
21 Staff Assessment. That is currently the way the
22 MOU envisions your processes integrating.

23 And as you can see from the right-hand
24 column, there's a whole lot more process that the
25 Energy Commission goes through in your certified

1 regulatory programs. It is not typical CEQA, it
2 is something quite different, I think, in that
3 respect. There is a lot more public process and a
4 lot more time to participate in those processes.

5 What we have suggested with our
6 compromise schedule. And I think maybe where the
7 staff and BLM may be heading as well, is towards
8 now the green document. If I could get you to --

9 PRESIDING MEMBER BYRON: Mr. Harris, if
10 I could just interrupt for a moment just to make
11 sure that we are understanding where these
12 documents are coming from. We are trying to do
13 this in real-time here at the dais.

14 MR. HARRIS: Sure.

15 PRESIDING MEMBER BYRON: These are not
16 in response to the staff's document. So this is
17 your own proposed schedule. And it is -- And the
18 red one, does this -- well, I'll let you, I'll let
19 you answer the question but just briefly tell me
20 why. Why do you have two of them?

21 MR. HARRIS: Okay.

22 PRESIDING MEMBER BYRON: What is the
23 difference between the red and the green?

24 MR. HARRIS: Okay, let me get there.
25 And first off, let me give you a little more

1 context. What I am doing now is kind of a high-
2 level, a high-level look at how you integrate the
3 Energy Commission process with BLM. I'll be
4 moving down to talk about specific dates for these
5 various acts but what I wanted to show with these
6 two documents are how your two processes line up
7 together.

8 PRESIDING MEMBER BYRON: So the red one
9 represents the existing MOU.

10 MR. HARRIS: The red one represents the
11 existing MOU. And again, without dates or without
12 regard to, you know, 90 days for this, 30 days for
13 that. I am just really trying to show how you
14 have intended to link these two permitting
15 processes together.

16 One of the things that is different
17 about your process that is not a typical CEQA: In
18 a typical CEQA process you have a Draft EIR and a
19 Final EIR. The linkages are very clear between
20 documents there. One of the things that's not as
21 clear with your certified regulatory programs is
22 exactly which documents kind of line up.

23 This is -- The red, again, is the
24 linkage that is envisioned in the MOU. So
25 Commissioner, on page 13 or 14 of your MOU there

1 is a time line that shows your activities lining
2 up with the BLM activities. And that is exactly
3 what this document is intended to show. That the
4 Draft EIS would be the Preliminary Staff
5 Assessment and the Final EIS would be the Final
6 Staff Assessment.

7 What we have suggested now, moving to
8 the green document. And again, these are all the
9 same time lines so you can literally lay these
10 things side by side if you would like to see how
11 they line up. Is that the linkages between the
12 two processes can come at a later date. And for
13 reasons we will explain, we think it is better if
14 they come at a later date.

15 I the compromise schedule what we have
16 suggested is that the Draft EIS be equated with
17 the Final Staff Assessment. I think there are a
18 lot of good reasons to have that linkage between
19 those two documents. The Final Staff Assessment
20 is always better than the Preliminary Staff
21 Assessment, that's the way the process has been
22 moved forward. You have a workshop period and
23 comments on that preliminary staff document. It
24 is intended to be the staff's testimony for the
25 proceeding moving forward.

1 So in making the linkages between the
2 documents in this scenario we have the Draft EIS
3 linked with the Final Staff Assessment and we have
4 the Final EIS linked to the Presiding Member's
5 Proposed Decision. So we have just moved back in
6 time the linkage of those documents.

7 HEARING OFFICER KRAMER: Let me pause
8 you there for a second. I think I heard staff
9 this morning saying they were willing to go along
10 with the green schedule. Is that correct,
11 Mr. Ratliff?

12 MR. RATLIFF: That is correct.

13 HEARING OFFICER KRAMER: In concept.

14 MR. RATLIFF: I think this is replowing
15 ground that we have already been over.

16 HEARING OFFICER KRAMER: I know
17 Commissioner Boyd needs to leave at about 10:30 so
18 I wonder if we need to discuss that point much
19 further. It appears to have been conceded
20 already.

21 MR. HARRIS: We'll move on.

22 MR. RATLIFF: We concede nothing but we
23 have agreed to the schedule. We think it works.
24 And we think there are certain advantages to it
25 and we think it gets to the end process faster.

1 HEARING OFFICER KRAMER: Now to be fair
2 to the intervenor. Ms. Gulesserian, were you
3 intending to object at all to the process that the
4 staff described and Mr. Harris is calling the
5 green process?

6 MS. GULESSERIAN: No. I mean, this is
7 the first time and we don't have the documents in
8 front of us. But as I understand, the Draft EIS
9 coming out with the FSA. That would not be, we
10 wouldn't have any objections to that.

11 HEARING OFFICER KRAMER: I think that's
12 all the parties.

13 MR. HARRIS: Okay. Well, as a long way
14 of teeing up my first, my first point, I think it
15 is important, though, that we all recognize that
16 this is an improvement on the existing process.
17 One thing that it does allow you to do is to issue
18 that Preliminary Staff Assessment then, as really
19 as an Energy Commission-only document. So the
20 first place we were looking to potentially save
21 some time is by getting that document out sooner
22 than the staff has proposed in their compromise
23 schedule.

24 The existing Committee Order has a
25 Preliminary Staff Assessment coming out on 11/14.

1 That was our understanding from the document. We
2 are hearing from staff now that that date is not
3 holding. We would like to see -- We think we can
4 gain up to a month by issuing that PSA sooner.
5 Because what that will allow us to do is to have
6 PSA workshops in December of this year. So that's
7 the first, I guess significant potential savings
8 of the three months we are looking for is having
9 that Preliminary Staff Assessment out about a
10 month sooner.

11 HEARING OFFICER KRAMER: Now do you feel
12 that would allow the subsequent efforts to move
13 forward as well?

14 MR. HARRIS: Yes, actually. We feel
15 that -- The workshops are an Energy Commission-
16 only activity. They are not required by the
17 federal process and so you definitely control your
18 own schedule there. We think you will be able to
19 get those hearings and those workshops -- not the
20 hearings. The workshops started in December of
21 2008. As opposed to, I think what staff is
22 proposing being January. So there's a month of
23 the three we are looking for right there.

24 HEARING OFFICER KRAMER: Then you must
25 be proposing to move forward some of the other

1 deadlines like the publication of the Final Staff
2 Assessment. Am I correct in that guess?

3 MR. HARRIS: You are correct, sir.

4 HEARING OFFICER KRAMER: Go ahead and
5 explain that.

6 MR. HARRIS: The second area where we
7 are looking to kind of gain some time is to cut
8 down the time between this preliminary document
9 and the FSA/FEIS or Draft EIS, excuse me.

10 In your typical schedule between the
11 Preliminary and the Final Staff Assessment there's
12 60 days. From what we see from staff's proposal
13 today there's, I think, four months so that's 120
14 days. We wouldn't necessarily need to have all
15 that time taken back but there's probably at least
16 a month and a half or maybe two months of time we
17 could save by having that document, the Final
18 Staff Assessment produced closer to the 60 day
19 schedule that is typical for the Commission.

20 HEARING OFFICER KRAMER: So roughly what
21 date would that be then?

22 MR. HARRIS: Roughly around February 1.

23 HEARING OFFICER KRAMER: I am going to
24 ask staff to respond but I think it would be
25 better if you would draw out all the other dates

1 that were suggested.

2 MR. HARRIS: Okay.

3 HEARING OFFICER KRAMER: Your estimate
4 for those.

5 MR. HARRIS: All right. So the Final
6 Staff Assessment around February 1. The same
7 thing with the BLM Notice of Availability, around
8 2/1. A prehearing conference on 2/15.
9 Evidentiary hearings on 3/1. I am going to skip
10 the Biological Opinion. I want to talk about that
11 issue separately if we could.

12 Moving down the next thing would be the
13 BLM DEIS 90 day comment period closes. That would
14 be 5/1. PMPD issued on 5/15. PMPD hearing on
15 5/30. PMPD comment period ends on 6/15. BLM
16 NOA/FEIS on 6/30. Governor's Consistency Review
17 60 day period would end on 8/30, although the
18 Governor could act sooner. The second page. I
19 need to check the 30 day protest period. I have
20 it as 7/30 in my schedule. Resolution of
21 protests, 8/30. Energy Commission Decision 9/1,
22 ROD 9/1, BLM grant 9/1.

23 And some of those dates may be Saturdays
24 for all I know. We were working on this this
25 morning. But those are roughly the dates we are

1 looking at. So the main places we pick up time
2 are really one month at the issuance of the PSA,
3 which we had anticipated on 11/14. And a couple
4 of months between the PSA and the FSA through your
5 scheduling purposes.

6 PRESIDING MEMBER BYRON: And just so I
7 can understand. The staff dates that are on the
8 first document, Mr. Ratliff, that you handed us.
9 Are those real dates or are those rounded dates as
10 well? When I say rounded I mean, Mr. Harris
11 obviously indicated he hasn't really had a chance
12 to even look at a calendar. He's just doing two
13 week intervals it seems, between each of these
14 dates.

15 MR. McFARLIN: I think we would have to
16 truth it but I think they should be, there may be
17 one or two that falls on a weekend, we'll have to
18 truth those. We'll do that before we docket it.

19 PRESIDING MEMBER BYRON: So they haven't
20 been truthed.

21 MR. McFARLIN: But this is pretty close.
22 This was put together Friday afternoon after we
23 met.

24 PRESIDING MEMBER BYRON: I'm sorry,
25 Mr. Harris, please continue.

1 MR. HARRIS: Those are the main points.
2 I guess the thing that we like about the schedule,
3 and the reason I apologize for wasting your time
4 going through the linkage in each document, is I
5 think there is a significant opportunity for the
6 two agencies to use the time in the remaining
7 October, November and December and early January
8 to figure out exactly what their documents are
9 going to look like.

10 We have considered the possibility of a
11 single document with a single cover. I don't know
12 that there is even agreement among the staff and
13 BLM about what the Final EIS will look like. We'd
14 like to hear a little bit more from staff on that.
15 It could be a single document with a single cover.
16 It could be a compilation of multiple documents as
17 was the case in the Sutter Project that WAPA was
18 the federal lead agency.

19 But in any event, those are the critical
20 linkages we are looking to make. We think that
21 there is a real opportunity for staff and the BLM
22 to use that time between now and the end of the
23 year to figure out exactly what they want the
24 documents to look like. We have opinions on that
25 but there's many ways to do that. We think that

1 time is well-spent allowing the PSA workshops to
2 go forward.

3 HEARING OFFICER KRAMER: Okay, we'll
4 come back to the Biological Opinion. Staff, do
5 you want to respond to Mr. Harris' proposals?

6 MR. RATLIFF: Well, Commissioners, I
7 would like to speak to them and I would also like
8 Tom Hurshman to have a chance to speak to them as
9 well. I think the first suggestion that you heard
10 was that we accelerate the process for putting out
11 the PSA and to initiate the workshops. Their
12 schedule would have the PSA being issued more than
13 a month before ours would be. We don't believe
14 that's practical from a process --

15 PRESIDING MEMBER BYRON: Mr. Ratliff,
16 didn't we in our September 12 Order stipulate a
17 date for PSA completion of 11/15, November 15?

18 HEARING OFFICER KRAMER: I have the 14th
19 and that came from staff's status report, I
20 believe. So has something changed between your
21 last status report and today that makes you need
22 the extra time?

23 MR. McFARLIN: Yes. That status report
24 presumed that -- well again, keep in mind we are
25 moving forward on a joint document the entire

1 time. And at that point we presume that primarily
2 the biological information would have been full
3 and complete at that point. That is still no
4 longer the case. So that's been the driving
5 force. We thought up until, on the process we
6 were on that was the driving mechanism at that
7 point. So we have been focusing our efforts on
8 resolving that so that we could get to the point
9 of the joint document.

10 If we go with just a PSA only, obviously
11 that is no longer a limitation. But then we need
12 to, today, turn around and rework those documents.
13 Step back a foot. You would have, obviously, a
14 gap in the biological information to be sure. So
15 this would allow us one week from today to
16 reorient staff's direction, two weeks for staff to
17 revise the document. And that would allow for
18 some review by CEC management and BLM prior to
19 formatting and publication.

20 MR. RATLIFF: So Commissioners, I think
21 it is possible to get the PSA out relatively
22 quickly, given the fact that we had until this
23 week and thought that it would be next year that
24 we would be putting it out. We are now going to
25 be changing our focus rather quickly to try to get

1 the document out as quickly as reasonably we can.
2 Finishing up the sessions that are unfinished,
3 leaving unresolved certain issues in at least a
4 couple of areas, like biology and transmission
5 planning. But trying to get a document that is
6 useful to the public and that BLM has had an
7 opportunity to review and find no major
8 disagreements with, out as quickly as possible.

9 But the fundamental thing about this
10 document, this PSA document as reflected in the
11 sheets that BrightSource distributed to you
12 earlier, is that it is really extraneous to the
13 federal process. And I don't think whether we put
14 it out November 14 or December 15 is going to
15 change much in terms of how fast we get to the end
16 of the process. I think it really is beside the
17 point so I don't want to spend too much time
18 arguing about how possible whether we could get it
19 out three days earlier or one week earlier or
20 whatever it is because I don't think it matters.

21 I think what is the critical path here
22 for getting to a license is the Draft
23 Environmental Impact Statement and the Biological
24 Opinion, which appears further down the list. And
25 we have it in the schedule as being a March 3

1 document. The question that arises, and perhaps
2 Mr. Hurshman can address it better than I can, is
3 to how difficult it is to get it out by March 3 or
4 how much we can accelerate that process. I am not
5 entirely sure. This is not entirely within the
6 Energy Commission staff's power to say when that
7 is going to be ready.

8 One of the issues which in our
9 discussions, it is my understanding has to be
10 resolved for the biological assessment will be
11 accepted by US Fish and Wildlife Service for the
12 beginning of the Biological Opinion process, is
13 the issue of what will be done with the tortoises
14 that have to be relocated, first of all. And
15 second of all, what is going to be the mitigation
16 for the disturbance of that endangered species'
17 removal from that area.

18 Those things I think we had previously
19 thought could be deferred until a later point.
20 But our understanding now is that those will --
21 clearly now that we are switching the FSA to being
22 that document it has to be determined by the time
23 our FSA comes out and it has to be determined by
24 the time the DEIS, that joint document comes out.

25 That takes a coordinated agreement

1 between state agencies and federal agencies about
2 the appropriateness of the mitigation that is
3 being discussed. And so the Department of Fish
4 and Game, the US Fish and Wildlife Service, the
5 Energy Commission's biological staff and BLM staff
6 will all be meeting to try to work out what that
7 should be. But it hasn't occurred yet. And it
8 has to occur and it has to be resolved in time for
9 that document to be published.

10 Now my understanding is that it is
11 ambitious to have that done by March. It may be
12 possible that it can be done faster. But I would
13 like perhaps Mr. Hurshman to give his view on that
14 as well.

15 MR. HURSHMAN: Thank you. Actually that
16 was a very good summary. We have been in
17 discussions with the Fish and Wildlife Service and
18 we have a much better idea of what they are
19 looking for in their document.

20 But there are a lot of decisions that
21 need to be discussed between state and federal
22 agencies in order to put together the completed
23 biological section for a Draft EIS. And at this
24 point I think our March, early March time frame
25 that we put on this probable date projection is

1 probably a best case situation for how long those
2 things are going to need to put it together.

3 And from a federal process point of
4 view, BLM is in a little bit different situation
5 than the Energy Commission is perhaps in terms of
6 releasing a document that is not a complete and
7 full analysis. When we put our Draft
8 Environmental Impact Statement out it does need to
9 contain those measures in there, just as if it
10 will be a Final Staff Assessment for the
11 Commission. It does need to have a complete
12 analysis of what the appropriate mitigation is
13 going to be for the project.

14 So from my perspective as Project
15 Manager, the March 3 time frame is probably a best
16 case as to when all of that can take place. In
17 addition to the biological section there is a
18 number of other issues that have yet to be worked
19 out regarding mitigation in the full description
20 of the project. And those things will just take
21 time to pull together with other agencies.

22 HEARING OFFICER KRAMER: Okay, thank
23 you. Did you have anything else to add,
24 Mr. Hurshman?

25 MR. HURSHMAN: Well, I assume we will go

1 down the schedule and get into a discussion of why
2 some of the dates between when say a Draft EIS and
3 a Final EIS should come out. I'll address those
4 at that time.

5 HEARING OFFICER KRAMER: Mr. Ratliff,
6 did you have anything else to add or should we go
7 into that right now?

8 MR. RATLIFF: Well I think perhaps you
9 should because, I mean, I could go down it as
10 well. I think the dates that follow from the
11 issuance of the Draft Environmental Impact
12 Statement/FSA are dates that are very optimistic.
13 In some cases they may be possible, in some cases
14 they may not be. But I think they are all dates
15 which understandably have been chosen because they
16 get to a set, final point by a time that
17 BrightSource feels they need to have a decision.

18 And we are sympathetic to that. I
19 understand why they need to get to that decision
20 and we would like to make it happen if we could.
21 But frankly I don't think that they are realistic
22 ones. And if we say that we are going to meet
23 those dates I think we will be back probably
24 arguing about the dates again.

25 I am not sure, frankly, that even if we

1 did meet these dates that it would get you to a
2 position, would get BrightSource to a position to
3 do the biological relocation work that they are
4 talking about in the time frame that they are
5 talking about, in any case.

6 Because even after the Energy Commission
7 process is finished and our license presumably has
8 been issued, there will still be a protest period
9 for the BLM ROD, which according to BLM is almost
10 predictable. And that is another period of I
11 believe -- Tom, correct me if I'm wrong, I think
12 90 days, which gets tacked on to the schedule
13 before that ROD gets issued. And I believe that,
14 again tell me if I am wrong, Tom. I believe that
15 that construction and relocation cannot begin
16 until the end of the protest period.

17 MR. HURSHMAN: That's correct.

18 MR. RATLIFF: So I am not sure you can
19 meet that, even with the applicant's schedule.
20 I'm not sure you can serve that purpose. But even
21 if you could I don't think that this schedule, the
22 alternative dates that are being proposed onto our
23 schedule, are ones that are likely to be realized,
24 even under a best case.

25 HEARING OFFICER KRAMER: Mr. Hurshman,

1 did you want to add anything about the dates?

2 MR. HURSHMAN: Sure, I would. The other
3 factor that involves, that we see that plays into
4 this March 3, '09 joint document date has to do
5 with the BLM review period on the Notice of
6 Availability. That is a fairly lengthy process
7 that takes place outside the realm of what BLM can
8 control at the state level here, where those
9 notices do have to be approved by our Washington
10 Office and sent over to the Assistant Secretary
11 for approval. And my experience with those is
12 that those time frames are very long. A typical
13 process is an eight to ten week process.

14 And so the, you know, it places a burden
15 on BLM locally to prepare briefing papers and
16 spell out what is going on with this project and
17 therefore we pretty much have to have those
18 mitigation requirements spelled out to be able to
19 start our Notice of Availability review process.
20 So again that plays into the practicality of
21 making it fairly impractical to move that March 3
22 date up any sooner.

23 As we follow down the list here, what
24 staff has shown as a probable date projection on
25 our schedule is roughly a seven month period

1 between the time a Draft Environmental Impact
2 Statement is published and the time that a Final
3 Environmental Impact Statement can be published.
4 And the reason for that lengthy period of time is
5 that there is a mandatory 90 day public comment
6 period on the EIS because of the BLM Plan
7 Amendment that takes place.

8 (Whereupon Associate Member Boyd
9 exited from the Hearing Room.)

10 There will be a certain amount of staff
11 time required to analyze those comments and
12 respond to all of those comments and actually then
13 prepare the Final Environmental Impact Statement.
14 Again, before that document can be published I
15 have another very similar, lengthy Notice of
16 Availability review process that has to take
17 place. And basically we have to summarize what
18 the comments have been, what the issues are at
19 that point and what the final document says.

20 So seven months is probably the minimum
21 time frame that BLM needs to be able to respond
22 and actually be able to publish a Notice of
23 Availability for that Final Environmental Impact
24 Statement. So while I appreciate Mr. Harris'
25 wanting to shorten that time frame down in there,

1 I just don't see that BLM can make that happen
2 through that NEPA process any faster than that
3 seven month time frame.

4 When the Notice of Availability does
5 come out for that Final Environmental Impact
6 Statement it does initiate a 30 day protest period
7 for the plan amendment portion of the decision
8 that BLM has to make. Again, our staff, you know,
9 you know, probable day projections here, are kind
10 of betting that that -- we are making assumptions
11 that no one is going to file a protest on that
12 plan in order to reach our estimated November 3
13 decision date for that Record of Decision.

14 I think it is -- You know, I don't how
15 to guess whether or not protests will be filed.
16 But we feel fairly certain that if there are
17 issues that are unresolved with the public that
18 that is one forum where the public would question
19 what is going on by the agencies and are likely to
20 file a protest action. The resolution of those
21 protests is not done locally, that is also done by
22 the Director of BLM. So the time frame involved
23 in reviewing those per BLM guidance is a minimum
24 of 90 days. So again, that's --

25 If a protest is filed it does carry the

1 decision date for BLM, the soonest decision date,
2 over into the first quarter of 2010. And so
3 there's very few options BLM has available to be
4 able to expedite the schedule much sooner than
5 what we have shown on the staff version.

6 MR. HARRIS: Mr. Kramer, could I respond
7 to a couple of things?

8 HEARING OFFICER KRAMER: Mr. Harris.

9 MR. HARRIS: First off I guess I want to
10 emphasize one thing. Friday is day 365 of this
11 siting case. It is our one year data adequacy
12 anniversary on Halloween, so you can make your own
13 joke up there I guess. And that's one of the
14 reasons, I guess, when I hear people talk about
15 moving the schedule along, you know, from our
16 perspective we are moving fairly slowly. We are,
17 like I said, one year into this on Friday.

18 I understand the concerns about the
19 biological issues. The biological issues are the
20 largest issue in the case and recognize that. I
21 guess I want to make a few points. Number one,
22 biology is one section of 23 or 24 in the
23 Preliminary Staff Assessment. It's a single
24 section. We haven't had data requests on air
25 quality, for example, since May. It seems like

1 there's a whole lot of sections that are probably
2 ready to go.

3 Additional contacts on the biological
4 issue as well. You know, we prepare a biological
5 assessment and submit it to the agencies. And I
6 mean by agencies to mean state and federal
7 resource agencies for their review. We did that
8 six weeks ago. It's completely out of our hands.
9 And we are being told that things just can't move
10 faster. I think there are meetings that are set
11 for November 12 or 13. So in the future three to
12 four weeks to talk about that biological
13 assessment.

14 We have heard indirectly that staff, you
15 know, has concerns about the information that has
16 been provided but we haven't heard anything for
17 six weeks. So I guess I want to make sure that we
18 are all clear that we are only talking about one
19 section here and we are talking about something
20 that is now in the agency's control and not our's.

21 It is very clear that we have to have a
22 Biological Opinion, not a BA, a Biological Opinion
23 before there is a ROD. That is absolutely the
24 legal requirement.

25 And one of the things that I think you

1 all need to do as a committee is distinguish
2 between things that you can't do legally and
3 things that people are telling they don't want to
4 do as a matter of policy. You can proceed down
5 this course with the Biological Assessment.
6 Moving as it is moving now we definitely need it
7 pre-ROD but it is not an obstacle to writing other
8 sections. It is not an obstacle to getting out
9 the staff's preliminary document.

10 One of the reasons to have workshops in
11 December is to take issues off the table. And as
12 I said, biology is one of 23. By the time we get
13 through the draft, you know, the Preliminary Staff
14 Assessment, we hope to be down to just a handful
15 of issues. That will expedite the process as
16 well.

17 It is clear that we will move no faster
18 than the schedule you actually set. If you set
19 something that assumes a seven month period it
20 will take seven months and we will face issues
21 about whether, can you accelerate those things
22 once they have been set. We realize that things
23 may happen that are unforeseen but clearly you are
24 not going to get things to move faster than the
25 schedule you set.

1 We think it is really important to get
2 the first document out the door. We are, I guess,
3 surprised to hear that 11/14 isn't a real date. I
4 am also surprised to hear that somehow the staff
5 has to reorient that first document. I don't know
6 what that means exactly. It's an Energy
7 Commission document that will be workshopped. And
8 the value to us is getting issues off the table.
9 And that's how we think we are going to move
10 things along more quickly.

11 So being in a hearing room in December
12 to talk about issues to get efficiency and, you
13 know, a power plant transmission licensing -- what
14 is it, TSLN, the safety and nuisance? Getting all
15 the little issues out of the way and focusing on
16 the real issues of the case may allow us to
17 accelerate some of these things.

18 I agree the biology issues are important
19 but they are not the ones that should be driving
20 the schedule, at least at this point. And if you
21 set a schedule that assumes failure we will never
22 move any faster than that.

23 MR. HAUBENSTOCK: And on the other side,
24 if we set a schedule that shows what we can do and
25 we do everything we can to live up to it, if

1 things happen that are beyond the agency's control
2 or beyond BrightSource's control, that will be
3 self-explanatory. But if we set a schedule that
4 is less than the optimum and it is less than what
5 we are capable of -- I know, for example, that
6 NOAs can move quite a lot faster.

7 I understand that given the current
8 state of resources it would be a difficult thing
9 to do in less than seven months. But this is our
10 opportunity to show what the agencies are capable
11 of doing. What we are capable of doing to show
12 that RPS renewable energy is actually really a
13 priority and that we are going to do everything we
14 can to move it forward as quickly as possible
15 while, again, remaining environmentally
16 responsible and making sure that we are doing this
17 the right way.

18 We are not looking to cut any steps, we
19 are not looking to do anything any faster than can
20 be done. But again, I very much appreciated what
21 Mr. Ratliff opened up the hearing with, which is
22 that there are areas in the schedule that we
23 really can cut back. And what we really would
24 like to see is a schedule that shows what we are
25 capable of.

1 HEARING OFFICER KRAMER: Okay. I have a
2 question for staff. If the PSA were produced in
3 mid-November as the current schedule has it. Let
4 me ask it another way. If it were produced in
5 December as you are proposing how would it differ
6 from a PSA that you produced in November? I am
7 gathering that the biological issues aren't going
8 to be that much clearer during that one month
9 period. What would be the advantage to waiting?

10 MR. RATLIFF: I think there are a couple
11 of things that have to happen. One is that I
12 don't believe our biological section is written
13 yet because it was waiting for, it was waiting to
14 be the Draft Environmental Impact Statement. So
15 although there has been a great deal of work in
16 that area and a great deal of attention focused on
17 it there isn't actually a draft, to my knowledge.
18 I certainly haven't seen one. She can speak to
19 this as well but I haven't seen one.

20 And I think that would have to be put
21 together and completed as quickly as we could do
22 it. Recognizing that the person who has been
23 assigned to this is now out on maternity leave,
24 that doesn't make it any easier but we would still
25 get it done. We have to get it done without her

1 now.

2 Secondarily, if we put it out in two
3 weeks this makes it almost impossible for
4 management to review it, or at least review it
5 with any, with any care. And it makes it almost
6 impossible to get any kind of consultation with
7 BLM because our intent has been to move in
8 parallel with BLM and have them on board with our
9 analysis.

10 And I don't think there, frankly, would
11 be time for the BLM people to react to our draft
12 if we said, we are going in two weeks. They
13 certainly could not react to the ones such as
14 biology because that still has to be completed.
15 So I think it would put the PSA in a more perilous
16 state if we had to go forward without, you know,
17 even internal, you know, proper internal review or
18 BLM review to get that document out. But I'll let
19 Che speak to it further because he is more the
20 nuts and bolts guy on getting the document
21 finished.

22 MR. McFARLIN: I was just going to say I
23 think Dick captured it nicely. He is absolutely
24 correct about the -- what I was leading to earlier
25 about we were presuming there would be information

1 available allowing us to complete some of that
2 analysis on that joint process. That has been
3 what we have been trying to resolve.

4 If we change paths today we will have to
5 go to the biology in particular and wrap that up
6 in some form or fashion. It won't be in the form
7 that it would be for the Draft EIS but it will be
8 something that allows the public to be as informed
9 as possible given what we know today about the
10 status of that subject area. So that is the
11 primary driving mechanism behind what we are
12 proposing today.

13 HEARING OFFICER KRAMER: But is that
14 section going to be appreciably more informative
15 if you wait until December to publish it?

16 MR. McFARLIN: I would say that it
17 allows a couple of weeks for that to be completed
18 to start the review of BLM and CEC, which would
19 proceed concurrently. And so that section
20 currently isn't written up, hasn't been reviewed
21 because of this very reason. We are trying to
22 resolve the informational need such that it could
23 be put together in this joint fashion for review.
24 So now today we are saying, hey, stop now, don't
25 pursue all that other information. Wrap it up as

1 best you can today, produce that in the next
2 couple of weeks and then start the reviews.

3 HEARING OFFICER KRAMER: But if it comes
4 out in December you do not expect it to be
5 complete and ready as a DEIS?

6 MR. McFARLIN: No, not as much as the
7 Draft EIS would be. But I think that given the
8 path the agencies are on with resolving or trying
9 to resolve some of the questions in early
10 November, it would certainly get us further to
11 that. But of course the section would have
12 already been written up by that point in time so
13 I'd have a hard time saying, you know. I don't
14 think it would be entirely complete but it would
15 hopefully be substantially so. At least to allow
16 the public and other agencies to have enough
17 information to have a real discourse on the
18 subject.

19 HEARING OFFICER KRAMER: And would there
20 be any advantage to perhaps producing a PSA
21 without the biological section and then maybe
22 producing that section in the next month?

23 MR. RATLIFF: We wouldn't want to do
24 that because biology has been the issue which has
25 drawn the greatest attention, the most public

1 comment and presumably the most controversy. To
2 put out a PSA that addressed everything else would
3 be, I think, a mistake.

4 And I do think that there is important
5 information that we can provide in a PSA now about
6 the nature of the impacts that would be of great
7 use if we do put it out and we do begin the
8 workshops to include biological resources. I
9 think to leave that out would probably reduce the
10 value of releasing the document at all. So our
11 preference, I think, is to have that be part of
12 it. I think a great deal of discussion and
13 attention has gone into the area, it is just that
14 the document is not complete in a form that is
15 ready to be reviewed.

16 MR. HARRIS: If I could. That is always
17 staff's preference. I guess I would make a couple
18 of observations. Number one, you know, the legal
19 obligation is to produce a single assessment. A
20 draft, a Preliminary Staff Assessment and a Final
21 Staff Assessment is by practice, it is not by
22 statute or regulation. So we have a lot of
23 flexibility.

24 In the past you have what they usually
25 call bifurcated a PSA. And there is no reason

1 that if that section lags that you couldn't notice
2 a further workshop on that one section. I do
3 think there would be a lot of value in getting
4 those other sections out in front of people so
5 they can take a look at them, figure out what the
6 issues are and get those issues off the table
7 which would make the overall process move more
8 quickly. So we would not object at all to the
9 idea that some of the sections may lag. And that
10 is one of our overall themes in this entire
11 process is we don't want the lagging item to be
12 the one that drives the schedule.

13 PRESIDING MEMBER BYRON: But don't you
14 agree, Mr. Harris, with Mr. Ratliff, that the
15 biological section of the PSA is, in fact, the key
16 section?

17 MR. HARRIS: Do I agree that it is the
18 key section of the environmental review document?
19 Yes, it is the most controverted issue in the
20 case. I mean, it is a large project with a large
21 footprint. I guess the point is they do have to
22 come together eventually. I think when you get to
23 the DEIS stage you are going to need all the
24 sections together in a single document. And at
25 that point BLM will have started their processes.

1 And really what we are talking about in
2 November and December is an Energy Commission-only
3 process, which I think gives you the flexibility
4 to bifurcate this thing if you need to. It is
5 important that the Draft EIS cover both those
6 sections. But I think in December we can probably
7 get through most of these sections and take them
8 off the table.

9 MR. RATLIFF: Could I respond to that?

10 HEARING OFFICER KRAMER: Mr. Ratliff.

11 MR. RATLIFF: I think Mr. Harris' point
12 that the PSA is optional is correct. And I think
13 it well illustrates the extraneous nature of the
14 data of that release as it affects the actual
15 schedule. We could do no PSA at all and have no
16 workshops on those issues and still the issue for
17 the overall schedule will be the issuance of the
18 Draft Environmental Impact Statement and the staff
19 FSA.

20 So, I mean, whether we dump the PSA
21 entirely or whether we bifurcate it, which I think
22 would be a mistake, or whether we go ahead and
23 issue it in the time frame that staff has proposed
24 to do so, it is not going to make any difference.
25 You aren't going to gain any time because the real

1 issue is when the Final Environmental Impact
2 Statement comes out.

3 Now one caveat to that is I think that
4 by putting out the PSA and by having it be as
5 complete a document as we can make it now, I think
6 we will get feedback that will make the FSA a
7 better document for the DEIS and which will allow
8 us to respond more fully to the issue, to the
9 comments that we get from the public on the PSA.

10 So I think there actually is an
11 advantage to having the PSA as part of this
12 process. I think you may be aware of there have
13 been times when we have dropped the PSA or left
14 important parts of it out and not workshopped
15 those issues before we put out an FSA and usually
16 that added to the process later on.

17 My inclination I think the best way to
18 do this is to go ahead and put out the PSA as soon
19 as we can but as a complete document with the most
20 important issue in it to go ahead and have
21 workshops on that. But in the meantime try to
22 make sure that the real critical path item for the
23 overall schedule, the Draft Environmental Impact
24 Statement/FSA, is proceeding because the
25 biological agencies are working out the issues of

1 mitigation and relocation.

2 HEARING OFFICER KRAMER: That leads me
3 to another question, which is about -- I think the
4 Committee would like to get a flavor for what,
5 what other unresolved issues are lurking out there
6 and how they might affect the progress of the
7 case. And that could be just areas of dispute, if
8 the parties could briefly summarize those. But
9 also if there are any open or unanswered data
10 requests that we might find out later if they are
11 not answered or dealt with properly will further
12 delay the schedule. I'll begin with the staff.

13 MR. McFARLIN: Yes, I mean, to date
14 staff has identified all their informational needs
15 for the PSA and the applicant has been responsive
16 and provided that information. And I think
17 there's a couple of items, although I couldn't
18 pick them off the top of my head, that need to be
19 addressed to some greater level of detail prior to
20 the publication of the Final Staff Assessment but
21 I don't have a list of that information here in
22 front of me today. There's just a couple of, you
23 know. There's just a lot of minor questions.

24 For socioeconomic, is the, you know,
25 the optimization plan that came about in May, does

1 that change any of the construction, you know,
2 projections and things like that. So there's a
3 lot of just those minor pieces of information
4 which we didn't think were necessary to be pursued
5 at this point, given that our focus was on trying
6 to produce a PSA document. Those seemed to be
7 rather extraneous details. The biology thing just
8 goes on and on and I couldn't even speak to all
9 the complexities of that. But we are waiting.

10 HEARING OFFICER KRAMER: What about the
11 transmission issues? I think somebody
12 specifically mentioned that.

13 MR. McFARLIN: Transmission issues. We
14 have seen parts of the System Impact Study to
15 date, not in its entirety. We have some scant
16 information upon, you know. Obviously that is not
17 part of this action but that's an indirect part of
18 the project. And we would like to see the full
19 and complete System Impact Study so that we can be
20 assured that that is the extent of the work that
21 is needed. Which SCE should be filing a
22 preliminary environmental assessment with the CPUC
23 in the near future and we hope to use that
24 document to better inform the FSA as well.

25 HEARING OFFICER KRAMER: So it may be

1 the case that you will be summarizing the impacts
2 of that project as part of your analysis?

3 MR. McFARLIN: Yes, yes. Just to inform
4 everyone of, you know, of likely, you know,
5 projects down the road.

6 HEARING OFFICER KRAMER: Mr. Harris.

7 MR. HARRIS: Just to reiterate what Che
8 said. I think we've responded to all the data
9 responses, the data requests. There's nothing
10 outstanding from us in that regard. The
11 transmission issues, as he has characterized it.
12 We have two of the SISs and the third one is any
13 day, depending on Edison's ability to deliver to
14 us. So again we are hung up with something else
15 there. But the minor kind of things that he is
16 talking about, the workforce and those kinds of
17 things, are exactly the kind of issues that are
18 ripe for workshops in my mind.

19 MR. RATLIFF: Just to clarify the
20 transmission issue. We hope that transmission
21 won't be an issue. We expect that it won't but
22 there are some pieces that are still missing.
23 There is a three phase, as I understand it. I
24 hope I characterize it correctly. A three-phase
25 System Impact Study which has to be performed for

1 this project. Two phases have been performed, one
2 is still outstanding, and we are waiting for that.
3 That should answer all of those questions but that
4 hasn't arrived yet.

5 Other issues I think to me seem to be
6 relatively small and I don't think they would be
7 controverted at hearing. At least they wouldn't
8 be by the staff. Eric is looking at me. Do you
9 want to say --

10 MR. KNIGHT: No. No, you're fine.

11 MR. RATLIFF: No? Okay, no problem with
12 that. So we don't expect there to be other big
13 issues. There are some issues regarding cultural
14 resources and the assessment of one particular
15 resource that hasn't -- I think we haven't
16 received that, is that correct?

17 MR. McFARLIN: Yes and we are moving
18 forward as best we can with the PSA. And that
19 would have been something that would have been
20 needed for the joint PSA/Draft EIS document.

21 MR. HARRIS: Was that the cultural issue
22 you just referenced?

23 MR. McFARLIN: Yes, that we were, that
24 was going to be part of the joint document.

25 MR. HARRIS: Just for your edification.

1 The outstanding cultural issue is something that
2 has to be filed under confidential seal and will
3 not be discussed at the hearings. I don't think
4 that is probably holding up the publication of the
5 public document.

6 And to be honest too, we agreed to do
7 some additional work at a workshop on the express
8 condition that it would not hold up the
9 environmental document. But it is not going to be
10 an issue. We have got the preliminary results to
11 staff and they are going to get the final results
12 and it will go safely into your vaults and be
13 hidden from the public as it should be to prevent
14 the resources from being impacted.

15 HEARING OFFICER KRAMER: Commissioner
16 Byron, did you have a few questions?

17 PRESIDING MEMBER BYRON: Well, I think
18 we are probably getting close here. Yes, I think
19 we are probably getting close here and I do have a
20 few things I want to get some clarifications on.

21 You know, some of the things that go
22 unstated here is that I really appreciate the
23 efforts of staff and BLM to work with the
24 applicant to see if there is a way that we can
25 improve the schedule. That was agreed to as part

1 of the Memorandum of Understanding that these two
2 agencies entered into I think well over a year
3 ago. So just starting from that point.

4 As I understand it, and I was trying to
5 jot down dates as Mr. Harris was going through his
6 discussion on the schedule. It looks to me as
7 though the best effort here is to take about a
8 month out of the PSA issue date and then maybe a
9 month of what I'll call optimism in terms of
10 setting the fastest schedule that we can.

11 If I recall, Mr. Harris, you indicated
12 the BLM -- everybody says ROD. That's Record of
13 Decision, correct? Would be issued by your
14 schedule around September 1, which is about two
15 months ahead of the staff's schedule. And you
16 started off by saying that there was as much as
17 three months as we could get out of the schedule
18 but I am not sure that is correct. Two months,
19 correct?

20 MR. HARRIS: Based on my chicken scratch
21 from the document I saw this morning, yes, that's
22 correct.

23 PRESIDING MEMBER BYRON: Okay.

24 MR. HARRIS: One of the things we are
25 going to do is go back and make sure we hit all of

1 the legal requirements. There are very few legal
2 requirements, as you know, in the schedule but a
3 lot of practice.

4 PRESIDING MEMBER BYRON: And I also
5 appreciate the comments made by the applicant that
6 we can't move faster than the schedule we set.
7 But of course the reason we are here today is to
8 see if we can set a schedule that we could
9 realistically meet. Because I am not interested
10 in an unrealistic schedule that just looks
11 optimistic on paper and two or three months from
12 now we find out that all we were doing was setting
13 an impossible goal here.

14 I have some more fundamental questions.
15 If we go back to the linkages of the Draft
16 Environmental Impact Statement to the Final Staff
17 Assessment. Have we thought through -- And the
18 other linkage, the Final Environmental Impact
19 Statement linked to the PMPD. I suppose my
20 question is to staff. Have we thought through all
21 the implications of this? Are you comfortable
22 that those documents can perform? And maybe this
23 question goes to the BLM as well. Are you
24 comfortable that those documents can indeed
25 perform each other's agency obligations?

1 MR. RATLIFF: Yes.

2 MR. DOYEL: I believe so.

3 MR. RATLIFF: We haven't decided exactly
4 how that compilation of documents will look but we
5 think --

6 PRESIDING MEMBER BYRON: It may take on
7 a slightly different form and appearance as well
8 then.

9 MR. RATLIFF: Yes. We think that it can
10 serve the legal purpose, the legal requirements of
11 the federal Final Environmental Impact Statement.

12 PRESIDING MEMBER BYRON: Good. And I
13 would like to acknowledge that as a major con --
14 I'm sorry, agreement. Because I know,
15 Mr. Ratliff, you said you concede nothing.

16 (Laughter)

17 PRESIDING MEMBER BYRON: But I think
18 that is a major agreement and I think that is very
19 helpful. And you had indicated, Mr. Ratliff, a
20 number of risks associated with these linkages and
21 accelerations. Could you go into a little bit
22 more detail there? Are we risking a schedule or
23 are we risking our ability to do our jobs here?

24 MR. RATLIFF: I am not sure how I used
25 that term so I am not sure what the question was.

1 I think when I spoke the first time I said that we
2 had discussed with the applicant and with the
3 Solicitor General for the Federal Resources Agency
4 the issue of how to avoid the necessity of having
5 to do a supplemental EIR if it should turn out
6 that the project or its mitigation should change
7 in any substantial way between the -- going with
8 the original schedule for the issuance of the FSA/
9 Final Environmental Impact Statement and the PMPD
10 at the Commission.

11 There is always a possibility that new
12 issues arise after the FSA is issued. There is
13 always the possibility that the PMPD resolves the
14 issues differently than the staff would have or
15 the staffs in this case would have in the FSA.
16 And if that should occur the Solicitor General
17 believes, and I agree it's plausible, that you
18 would have to do a Supplemental EIS, which would
19 add considerably more process time to the overall
20 process, to the end point that BrightSource wants
21 to get to.

22 The hope and the belief here is that by
23 using the PMPD as part of the Final Environmental
24 Impact Statement you will avoid the potential
25 necessity for that kind of supplemental work. And

1 BLM in the end agreed that that would be something
2 that they think will work for them. And that is
3 what is important to us because we can do it
4 either way. But the important thing is that it
5 has to work for BLM and in the end they said that
6 it could.

7 So I don't know quite how I used the
8 word so I am a little unsure if I am answering the
9 question. But I think when I used the term risk I
10 thought I used it to indicate that the schedule we
11 have now agreed upon does eliminate certain
12 process risks that we hadn't really considered
13 when we did the original MOU.

14 PRESIDING MEMBER BYRON: In fact that
15 was another question. Are we going to have to
16 revise the MOU and will that impact the schedule
17 at all?

18 MR. RATLIFF: I don't know the answer to
19 the former but it certainly -- I don't think it
20 impacts the schedule if we have to revise it. And
21 since we have arrived at this one in concurrence
22 with BLM and it has not been forced upon them I
23 don't think that should be a problem.

24 PRESIDING MEMBER BYRON: Well my primary
25 interest, besides this project of course, is that

1 it is the first of what we hope will be many.
2 That is really my primary interest in making sure
3 we set a reasonable schedule but one that we feel
4 very confident we can meet for future projects as
5 well. So I know we are learning as we go along
6 here so that's why I asked about the MOU. Perhaps
7 it can be revised following the completion of this
8 project. Although we have more projects coming.
9 They are already --

10 MR. RATLIFF: Right. And we will
11 probably want to go back over it with BLM as to
12 whether they think it is appropriate to revise it.
13 But if we do so it will be on a different path
14 that we do that.

15 PRESIDING MEMBER BYRON: Okay.

16 MR. HARRIS: Commissioner, if I could on
17 the point of revising the MOU. I don't think you
18 have to revise the MOU. In our filing of whenever
19 it was, I'll give you the date, I think it was the
20 October 14 filing. We quote out of the MOU.
21 There is a section that talks about the flow chart
22 at the end. And it is Attachment B and quoting
23 from the MOU.

24 "Attachment B consists of a
25 flow chart describing how the

1 integrated CEC/BLM process is
2 expected to function. This flow
3 chart may be modified by agreement
4 of the parties without amending the
5 MOU as we continue to work the
6 process."

7 And that is from page three of the MOU.

8 So I think you actually had the foresight to
9 create a living document there so I don't think
10 you need to worry about amending the MOU.

11 PRESIDING MEMBER BYRON: Okay, thank
12 you. And I guess it is not really a question but
13 I do take Mr. Hurshman's comments to heart as well
14 when he said that we have probably a seven month
15 minimum time required by the BLM in order to
16 conduct their review process. We are quite
17 concerned that we don't do anything to short-
18 change either agency's processes here.

19 I was given a copy of a letter this
20 morning that I am sure Mr. Hurshman has as well
21 from the Western Governors Association signed by a
22 couple of Governors to the Director of the BLM,
23 Mr. Jim Caswell. Asking them to do everything
24 they can to assure all applications, and these are
25 for solar projects, are promptly reviewed and

1 final decisions are rendered as quickly as
2 possible.

3 So I think all the agencies are feeling
4 sufficient, say we say encouragement, to expedite
5 these. I am hopeful that that would shorten the
6 review time for some of the, and I am sure I will
7 get my acronyms wrong, NOA or NOI that the BLM has
8 to do that he indicated earlier this morning could
9 take as much as eight to twelve weeks, I believe,
10 back in Washington DC. So I am hopeful that that
11 could be expedited as well.

12 I guess I only have one other question
13 and that is, is the applicant aware of a letter
14 that was written, I believe about two weeks ago,
15 from Pacific Gas and Electric to Governor
16 Schwarzenegger with regard to the financial crisis
17 and how some of these projects may be affected.

18 MR. HARRIS: I looked at that letter,
19 yes, it came into my email. But I would be lying
20 if I said I read it closely or without bias.

21 PRESIDING MEMBER BYRON: And I have read
22 some responses since then as well. It seems to be
23 a pretty self-serving letter in that it indicates
24 the investor-owned utility may be the only agency,
25 or let's say company, capable of doing these kinds

1 of projects in the future.

2 Have you had opportunity to discuss what
3 is driving all of this is the power purchase
4 agreement that you have entered into -- Have you
5 had opportunity to discuss with this particular
6 utility, which happens to be the one, I believe,
7 that you are contracting with on this project,
8 whether or not there is any latitude in that power
9 purchase agreement schedule that is driving all
10 this discussion right now?

11 MR. HAUBENSTOCK: The contract with PG&E
12 is currently before the Public Utilities
13 Commission for its review and we have not engaged
14 in any negotiations with PG&E further to that
15 contract. We know that PG&E is relying on that
16 contract and many others to achieve its RPS
17 compliance. And it is certainly our hope and our
18 expectation that we will work together with PG&E
19 and with the state agencies and federal agencies
20 to try to move forward to try to get that energy
21 on-line as quickly as possible.

22 PRESIDING MEMBER BYRON: Well,
23 Mr. Haubenstock, thank you for your answer and I
24 don't mean to put you on the spot. We are all
25 working here diligently to do this as quickly as

1 we can. We are going to be issuing a Revised
2 Order here, I think, based upon the information
3 that we have gotten today. But let's just say
4 that the company that is entering into this
5 agreement to purchase your power has a role in all
6 of this as well. So we will be looking to them
7 for what they can do to help us as well in this
8 process.

9 MR. HAUBENSTOCK: Absolutely. And we
10 will be working with all stakeholders. And we do
11 very much appreciate not just the staff's
12 tremendous work and willingness to look at things
13 in a new way but also the Commission's and the PUC
14 and PG&E's willingness to try to work with us to
15 try to get this, again, done as quickly as
16 possible and done in the right way. So thank you.

17 PRESIDING MEMBER BYRON: Thank you.

18 HEARING OFFICER KRAMER: With that,
19 Ms. Gulesserian, did you wish to make any
20 statements on behalf of Intervenor CURE?

21 MS. GULESSERIAN: No, I do not have any
22 comments, thank you.

23 HEARING OFFICER KRAMER: Let's see.
24 Mr. Hurshman, you have already spoken.
25 Mr. Thompson, you were just observing, is that

1 correct? He is probably muted.

2 PRESIDING MEMBER BYRON: Mr. Hurshman
3 may have further comments. Do you?

4 MR. HURSHMAN: I guess -- You asked a
5 little bit ago how the staff felt about kind of
6 changing the direction on here. And I guess I
7 would respond by saying that BLM does feel very
8 comfortable that our process here to align our
9 Draft Environmental Impact Statement with the FSA
10 is -- we are very comfortable with that and we
11 think that that will make an adequate document.
12 It will explain to the public and will make a
13 good, complete record.

14 I personally have more question marks in
15 my mind just because we have not had the staff
16 time to be able to ferret out exactly what our
17 Final Environmental Impact Statement will look
18 like and how we would suggest melding that to one
19 degree or another with the PMPD.

20 I guess it is fair to point out that if
21 there are major differences that are developed
22 through the PMPD public process that would differ
23 from what the Draft EIS and Final Staff Assessment
24 say, that those are really going to need to be
25 very closely coordinated with the BLM. Because it

1 would not do BrightSource or anyone any good if
2 there were some sort of measures that were
3 proposed different from the joint analysis that
4 were unacceptable for some reason for BLM.

5 And I am thinking, you know, we could
6 end up with some sort of a non-compliance issue
7 with our land use plans out there that could be
8 very detrimental to the project. So it will take
9 some closer coordination with BLM and the
10 Committee at the PMPD stage. And we not having
11 experienced that we are still struggling a little
12 bit visualizing that. But those are going to be
13 discussions that we will have with the staff and
14 with BrightSource over the next few weeks
15 probably, as we are trying to work through exactly
16 how these documents are going to be crafted.

17 HEARING OFFICER KRAMER: And we look
18 forward to seeing you at our hearings so we can
19 have those discussions in the public context that
20 they have to be held.

21 MR. HURSHMAN: Exactly. BLM will
22 definitely needs and wants to participate in those
23 hearings.

24 PRESIDING MEMBER BYRON: Mr. Hurshman, I
25 would like to reiterate my commitment to BLM that

1 we are trying to do a process here that does not
2 just work for this project but works on all future
3 projects. I want to assure you that we have your
4 agency's requirements and the laws you have to
5 fulfill in mind in everything we are doing here as
6 well.

7 MR. HURSHMAN: Great, thank you.

8 HEARING OFFICER KRAMER: On my checklist
9 I think that covers all the business we had before
10 us today. Does either party wish to --

11 MR. HARRIS: There's a representative of
12 the BLM here too, Bob Doyel. I don't know, Bob,
13 if you wanted to say anything. We didn't
14 introduce Bob.

15 MR. DOYEL: No. What I heard today I
16 think was important and accurate and I appreciate
17 everybody getting together and working together on
18 this process.

19 PRESIDING MEMBER BYRON: Absolutely.

20 HEARING OFFICER KRAMER: Do we have any
21 members of the public in the audience here who
22 wish to make a comment?

23 Anything final from the staff or the
24 applicant?

25 Hearing nothing I guess we will be

1 adjourned. Thank you.

2 MR. RATLIFF: One question.

3 HEARING OFFICER KRAMER: Mr. Ratliff.

4 MR. RATLIFF: Did I hear anything about
5 the modification of the schedule coming from the
6 Committee in those final statements? If so, I
7 would like to make sure that we understand them.
8 Commissioner Byron, are we with the dates that we
9 have in the staff handout that we gave you or are
10 we with something else?

11 PRESIDING MEMBER BYRON: Mr. Ratliff, I
12 can appreciate your interest in getting an answer.
13 We need to caucus here as a committee and we hope
14 to get an order out in the next couple of days --

15 MR. RATLIFF: Okay.

16 PRESIDING MEMBER BYRON: -- with regard
17 to our revised schedule.

18 MR. RATLIFF: Okay, thank you.

19 PRESIDING MEMBER BYRON: We do not want
20 to be the cause of slowing the schedule down.

21 MR. RATLIFF: Okay.

22 MR. HARRIS: And we will -- I have given
23 you dates orally and we will try to reduce those
24 to writing and get them to you today so you will
25 have those as well.

1 PRESIDING MEMBER BYRON: That would be
2 very helpful.

3 MR. HARRIS: We also want to make sure
4 we haven't scheduled things on Saturdays and that
5 kind of stuff.

6 HEARING OFFICER KRAMER: I think the
7 schedule will be, it won't be as precise as a day.
8 And if we do give a date in the schedule the
9 parties are -- for workshops and stuff that we are
10 not involved, you are certainly free to adjust it
11 by plus or minus a couple of days to make it work
12 for your own schedules.

13 Seeing nothing further we are adjourned,
14 thank you.

15 MR. RATLIFF: Thank you.

16 MR. DOYEL: Thank you.

17 MR. HAUBENSTOCK: Thank you.

18 (Whereupon, at 11:07 a.m., the
19 Committee Conference was
20 adjourned.)

21 --o0o--

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I, RAMONA COTA, an Electronic Reporter,
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